

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST : FINAL DECISION
 :
ELIZABETH S. BUENZLI-FRITZ, R.N. , : AND ORDER
RESPONDENT. : LS0802184NUR

Division of Enforcement Case No. 07NUR467

The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Board of Nursing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 4th day of September, 2008.

Kaufmann
Board

Marilyn
Member of the
Board of Nursing

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS

ELIZABETH S. BUENZLI-FRITZ, R.N.,
RESPONDENT.

PROPOSED FINAL DECISION
AND ORDER

Case No. LS 0802184 NUR

DOE case # 07 NUR 467

PARTIES

The parties to this action for the purposes of Wis. Stat. § 227.53, are:

Elizabeth S. Buenzli-Fritz, R.N.
3115 County Highway E
Stitzer, WI 53825

Jeanette Lytle, Attorney for Complainant
Division of Enforcement
Department of Regulation & Licensing
P. O. Box 8935
Madison, WI 53708-8935

Wisconsin Board of Nursing
Wisconsin Department of Regulation and Licensing
P.O. Box 8935
Madison, Wisconsin 53708-8935

PROCEDURAL HISTORY

A motion for default in the above-captioned matter was held on June 3, 2008, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney John R. Zweig. The respondent, Elizabeth S. Buenzli-Fritz, did not appear and did not file an answer to the complaint. Based on the entire record of this case, the undersigned administrative law judge recommends that the Board of Nursing adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Elizabeth S. Buenzli-Fritz, R.N., (DOB 03/03/1949) is licensed as a professional nurse in the State of Wisconsin (license # 30-81167). [Expired] This license was first granted on March 26, 1982. Renewal was denied pursuant to Wis. Stat. § 440.12 due to a tax delinquency on or about September 4, 2002. Pursuant to Wis. Stat. § 73.0301, if respondent submits a nondelinquency certificate, the Board must reinstate her license unless there are other grounds for denying reinstatement.
2. Respondent's most recent address on file with the Wisconsin Board of Nursing is 3115 County Highway E, Stitzer, Wisconsin, 53825.
3. Respondent was also formerly licensed as a chiropractor in the State of Wisconsin (license # 12-2358). That license was first granted on December 1, 1988. [Expired] Renewal was denied pursuant to Wis. Stat. § 440.12 due to a tax delinquency on or about September 4, 2002.
4. On or about November 4, 2007, a Division of Enforcement investigator traveled to Fennimore Chiropractic at 1196 Lincoln Avenue in Fennimore, Wisconsin. She observed a picture window containing the words Fennimore Clinic, Dr. Elizabeth Buenzli-Fritz, Chiropractor. The entrance door noted office hours to be Mondays and Wednesdays, 8:00 a.m. to 8:00 p.m., and Tuesdays and Fridays, 8:00 a.m. to 5:00 p.m., Saturdays by appointment.
5. On or about November 14, 2007, a Division of Enforcement investigator traveled to Fennimore Chiropractic. She

spoke to two patients who were waiting for treatment from respondent. Then she interviewed respondent, who admitted that she was aware that her license was not current and that she had been practicing without a license in violation of law.

6. Respondent told the Division of Enforcement investigator that she is also working as a nurse, in a federal hospital in Wisconsin, under an Iowa nursing license. Respondent resides in Wisconsin and receives mail at a Wisconsin address.

7. The respondent was validly served with the notice of evidentiary hearing and motion for default hearing in this matter.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter, pursuant to Wis. Stat., §§ 441.07 (1) (d) and 441.50 (3) (b).

2. By failing to file an Answer as required by Wis. Admin. Code § RL 2.09, and by failing to appear at the default hearing, the respondent is in default under Wis. Admin. Code § RL 2.14, and the Board of Nursing may make findings and enter an order on the basis of the Complaint and the evidence presented at the motion for default hearing.

3. The conduct described in Findings of Fact paragraphs 2 through 6, above, violated Wis Stat., § 441.50 (4) (b) and Wis. Admin. Code §§ N 7.04 (1) and (5). Such conduct constitutes unprofessional conduct within the meaning of the Code and Statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the respondent's right to reinstate her license to practice as a registered nurse in Wisconsin, number #30-81167, upon submission of a non delinquency certificate pursuant Wis. Stat. § 73.0301, is REVOKED.

IT IS FURTHER ORDERED that the respondent's privilege to practice nursing in Wisconsin under her Iowa license pursuant to the multi-state Nursing Licensure Compact is, REVOKED.

IT IS FURTHER ORDERD that costs of this proceeding shall be assessed against the respondent.

OPINION

Applicable Wisconsin Statutes and Administrative Rules

Wis. Stat., § 441.07 (1) (d):

(1) The board may, after disciplinary proceedings conducted in accordance with rules promulgated under s. 440.03 (1), revoke, limit, suspend or deny renewal of a license of a registered nurse, a nurse-midwife or a licensed practical nurse, may revoke, limit, suspend or deny renewal of a certificate to prescribe drugs or devices granted under s. 441.16, or may reprimand a registered nurse, nurse-midwife or licensed practical nurse, if the board finds that the person committed any of the following:

(d) Misconduct or unprofessional conduct.

Wis. Stat., § 441.50 (2) (e):

(e) "Home state" means the party state that is the nurse's primary state of residence.

Wis. Stat., § 441.50 (3) (b):

(b) Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall

promptly notify the home state of any such actions by remote states.

Wis. Stat., § 441.50 (4) (b):

(b) A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

Wis. Admin. Code §§ N 7.04 (1) and (5):

N 7.04 Misconduct or unprofessional conduct. As used in s. 441.07 (1) (d), Stats., "misconduct or unprofessional conduct" means any practice or behavior which violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public. "Misconduct or unprofessional conduct" includes, but is not limited to, the following:

(1) Violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing. A certified copy of a judgment of conviction is prima facie evidence of a violation;

(5) Practicing beyond the scope of practice permitted by law;

Section RL 2.14 of the Wisconsin Administrative Code provides that a respondent who fails to answer a complaint or fails to appear at a hearing is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent. In this case, the respondent did not file an answer to the complaint, nor did she appear at the scheduled default hearing. As a result, the motion for a default judgment was granted at the time of the hearing.

The Division of Enforcement requested that the discipline to be imposed should be revocation of the right to renew the respondent's nursing license and the privilege to practice nursing in Wisconsin pursuant to the multi-state Nursing Licensure Compact. The rationale for revocation was that the respondent has been unwilling to cooperate in the investigation of this matter, evidenced ultimately by the failure to respond to the complaint. Further the respondent is practicing chiropractic without a current license, which is a violation of a statute or rule substantially related to the practice of nursing. Also, the respondent has failed to obtain renewal of her Wisconsin home state nursing license. The reason that the respondent's chiropractic and nursing licenses in Wisconsin are not renewed is because she has not paid taxes that she owes in this state. Hence, she is using her Iowa nursing license to circumvent meeting her duty in Wisconsin to pay her taxes, and is illegally practicing both professions in Wisconsin. The respondent is a scofflaw, and the only means to address her conduct is with the revocations suggested by the Division of Enforcement.

It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481, 485 (1969). Revocation is warranted in this instance. Pursuant to the multi-state Nurse Licensure Compact a nurse shall hold licensure in only one party state at a time, issued by the "home state," which is defined as the state that is the nurse's primary state of residence. Accordingly, the multi-state Nurse Licensure compact allows party states to limit or revoke the multi-state licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens.

Costs

Wis. Stat. § 440.22(2) provides in relevant part:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Board of Nursing, and that the board's discretion extends to the decision whether to assess the full costs or only a portion of the costs.

The ALJ's recommendation and the Board of Nursing's decision as to whether the full costs of the proceeding should be assessed against the credential holder, like the supreme court's decision whether to assess the full costs of disciplinary proceedings against disciplined attorneys, see Supreme Court Rule 22.24(1m), is based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties;
- 4) The respondent's cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licensees, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and
- 7) Any other relevant circumstances.

The respondent by nature of her being in default has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. To the contrary, her conduct is of a serious nature. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven, (being none), or that certain factual findings were investigated and litigated that were unnecessary. Given the fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licensees, fairness here dictates of imposing the costs of disciplining the respondent upon the respondent and not fellow members of the nursing profession who have not engaged in such conduct.

Date: July 10, 2008

William Anderson Black
Administrative Law Judge